

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**April 25, 2003**

**IN RE:**

**PETITION OF TENNESSEE AMERICAN  
WATER COMPANY TO CHANGE AND  
INCREASE CERTAIN RATES AND  
CHARGES SO AS TO PERMIT IT TO  
EARN A FAIR AND ADEQUATE RATE  
OF RETURN ON ITS PROPERTY USED  
AND USEFUL IN FURNISHING WATER  
SERVICE TO ITS CUSTOMERS**

**DOCKET NO.  
03-00118**

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**ORDER GRANTING MOTIONS TO COMPEL IN PART AND DENYING IN PART**

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This docket came before the Pre-Hearing Officer for consideration of *Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on Chattanooga Manufacturers Association* and *Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on the Consumer Advocate and Protection Division of the Attorney General for the State of Tennessee*.

**I. PROCEDURAL HISTORY**

In accordance with the Procedural Schedule contained in the *Order on March 12, 2003 Status Conference*, Tennessee American Water Company ("TAWC") issued discovery requests to the Chattanooga Manufacturers Association ("CMA") and the Consumer Advocate and Protection Division of the Office of the Attorney General ("CAPD") on March 26, 2003. CMA and CAPD received the same eleven discovery requests from TAWC.<sup>1</sup> On April 7, 2003, CMA

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<sup>1</sup> The text of each request is appended to this order.

and CAPD filed objections. CMA objected to all eleven of TAWC's requests. CAPD specifically objected to Requests Nos. 1 through 8. In response to the objections, TAWC filed motions to compel on April 11, 2003 asking that each party be directed to respond to all eleven discovery requests.

On April 16, 2003, CMA and CAPD filed responses to TAWC's motions to compel. In addition, CMA filed limited responses to TAWC's discovery requests.

## **II. GENERAL DISCOVERY PRINCIPLES**

Pursuant to Authority Rule 1220-4-2-.10, when informal discovery is not practicable, discovery shall be effectuated in accordance with the Tennessee Rules of Civil Procedure. These rules permit discovery through oral or written depositions, written interrogatories, production of documents or things, and requests for admission.<sup>2</sup> Through these instruments, a party "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party."<sup>3</sup> Further, parties may learn of information related to books, document or other tangible items as well as the identity and location of individuals with knowledge of a discoverable matter.<sup>4</sup> Tennessee's rules do provide some limitations, however. Rule 26.02 permits a court to limit discovery if:

(i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or, (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the

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<sup>2</sup> Tenn. R. Civ. P. 26.01 (2003).

<sup>3</sup> *Id.* at 26.02(1). "Relevancy is extremely important at the discovery stage. However, it is more loosely construed during discovery than it is at trial. The phrase 'relevant to the subject matter involved in the pending action' has been construed 'broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.'" *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 220 n.25 (Tenn. Ct. App. 2002) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380, 2389, 57 L.Ed.2d 253 (1978)).

<sup>4</sup> Tenn. R. Civ. P. 26.02(1) (2003).

amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.<sup>5</sup>

Rule 37.01 permits a party to file a motion to compel if a party fails to answer an interrogatory, including providing an evasive or incomplete answer.<sup>6</sup> "Decisions to grant a motion to compel rest in the trial court's reasonable discretion."<sup>7</sup>

### **III. OBJECTIONS, MOTIONS, AND RESPONSES**

In its motions to compel, TAWC divides the eleven discovery requests into the following four groups: basic opposition to rate increase, expert testimony, documents relied upon or referred to when responding to discovery, and materials for use at the hearing.

#### **A. BASIC OPPOSITION TO RATE INCREASE (REQUEST NOS. 1, 10 AND 11)**

CMA asserts that Request No. 1 is overbroad and premature in that testimony is not due until May 30, 2003.<sup>8</sup> CMA objects to Request No. 1 to the extent it requests privileged information.<sup>9</sup> Further, CMA states that in the "spirit of cooperation and to further the discovery process, CMA states that the rate increase requested by the Company is excessive and will be harmful (if implemented) to CMA's members and others."<sup>10</sup> CMA contends that Request No. 10 is overbroad, vague, ambiguous, and unduly burdensome and requests irrelevant or privileged information. Specifically, CMA asserts that the language "refer or relate" is too broad.<sup>11</sup> CMA also contends that Request No. 11 is overbroad, vague, and ambiguous.<sup>12</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 37.01(2).

<sup>7</sup> *Kuehne & Nagel, Inc. v. Preston, Skahan & Smith International, Inc.*, 2002 WL 1389615, \*5 n.4 (Tenn. Ct. App. June 27, 2002).

<sup>8</sup> *Chattanooga Manufacturer's Association's Objections to TAWC's First Set of Interrogatories and Request for Production of Documents*, 3 (Apr. 7, 2003) (hereinafter *CMA Objections*).

<sup>9</sup> *Chattanooga Manufacturers Association's Responses to Discovery and to TAWC's Motion to Compel*, 1-2 (Apr. 16, 2003 (hereinafter *CMA Response*)).

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *CMA Objections* at 6.

<sup>12</sup> *Id.* at 7.

CAPD objects to Request No. 1 to the extent that any response to the request would include privileged communications or work product.<sup>13</sup> CAPD also characterizes TAWC's requests in general as unreasonably cumulative, duplicative, obtainable from other sources and unduly burdensome.<sup>14</sup> CAPD notes that, along with its response to the motion to compel, it filed limited responses to the discovery requests, but that it was unable to respond thoroughly and entirely given the unavailability of information.<sup>15</sup> CAPD states that it was necessary for it to assert its objections and despite its limited responses, which are appropriate, its objections are valid.<sup>16</sup> CAPD next asserts that its petition to intervene states the heart of the CAPD's opposition.<sup>17</sup> CAPD did not specifically object to either Request Nos. 10 or 11.

In its motion to compel, TAWC argues that its requests are basic and unburdensome. TAWC asserts that it is merely attempting to ascertain the basis of the intervenors' opposition.<sup>18</sup> As to CMA's assertion that Request No. 1 is premature, TAWC argues that "it is not premature for the CMA to give to TAWC fair notice of the basis of its intervention and what objections or oppositions it has to the rate increase."<sup>19</sup> TAWC also notes that the CAPD did not specifically

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<sup>13</sup> *Objections by the Consumer Advocate and Protection Division of the Office of the Attorney General to Tennessee American Water Company's Initial Request for Discovery*, 4-5 (Apr. 7, 2003) (hereinafter *CAPD Objections*).

<sup>14</sup> *Reply of the Consumer Advocate and Protection Division of the Office of the Attorney General to Tennessee American Water Company's Motion to Compel Responses to Discovery*, 5 (Apr. 16, 2003) (hereinafter *CAPD Response*).

<sup>15</sup> *Id.* at 1. In its response to Request No. 1, CAPD states that TAWC's proposed rate increase appears to contravene the Authority's January 11, 2000 order in Docket No. 99-00891 and the rate of return appears to lack support. As to Request No. 10, CAPD asserts that it has not yet determined which documents refer or relate to the subject matter but that it has reviewed TAWC's petition and the Authority's January 11, 2000 order. CAPD responded to Request No. 11 by providing a list of witnesses and attorneys. *Responses by the Consumer Advocate and Protection Division of the Office of the Attorney General to Tennessee American Water Company's Initial Request for Discovery*, 1-2, 8-9 (Apr. 16, 2003) (hereinafter *CAPD Response to Discovery*).

<sup>16</sup> *CAPD Response* at 2.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on Chattanooga Manufacturers Association*, 2 (Apr. 11, 2003) (hereinafter *Motion to Compel – CMA*); *Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on the Consumer Advocate and Protection Division of the Attorney General for the State of Tennessee*, 3 (Apr. 11, 2003) (hereinafter *Motion to Compel – CAPD*).

<sup>19</sup> *Motion to Compel – CMA* at 3.

object to Request Nos. 10 and 11 and states that given the relationship between Request Nos. 10 and 11 and Request No. 1, any objection to Request No. 1 is without merit.<sup>20</sup>

The Pre-Hearing Officer finds that the objections are without merit. Clearly, the legal and factual bases for any opposition to TAWC's petition are matters that are relevant to the subject matter of this proceeding. A mere statement that the rate increase is too large or would be harmful is an incomplete response. Request No. 1 is not premature. There is no requirement that a party not know of the basis for opposition to its petition until the filing of testimony. To the contrary, in a typical pleading cycle the petitioner would become aware of the bases for opposition to the requested relief upon the filing of a response. In this case, there was no such responsive pleading. Additionally, a party is entitled to request documents that relate to and the identities of individuals that have knowledge of discoverable matters. Moreover, the requests are not overbroad in that each is limited to the rate increase requested by TAWC in this docket or the response to Request No. 1.

Despite these findings, as to Request No. 10, it would be unnecessarily duplicitous for the responding parties to produce documents that have already been filed in the administrative record. Also, CMA and CAPD should not be required to provide privileged or work product information, absent further proof by TAWC.<sup>21</sup>

Based on the foregoing, the Pre-Hearing Officer finds that the motions to compel should be granted. CMA and CAPD shall respond to the requests to the extent information is available. When responding to Request No. 10, the parties need only provide references to those documents

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<sup>20</sup> *Motion to Compel – CAPD* at 3.

<sup>21</sup> See discussion, *infra* pages 8 through 9, regarding the work product doctrine. Note, however, that CAPD did not assert that these requests necessarily require the production of information protected by the work product doctrine.

that are in the record. CMA and CAPD are not required to produce information or documents it deems in good faith to be subject to a privilege or the work product doctrine.

**B. EXPERT TESTIMONY (REQUEST NOS. 2 AND 4 THROUGH 8)**

CMA contends that Request Nos. 2 and 4 through 8 are overbroad, vague, ambiguous, and unduly burdensome. CMA also states that it has not identified experts that will testify at the hearing and that CMA will do so within the time limits of the procedural schedule.<sup>22</sup> Under Request No. 5, however, CMA also states that “it has historically supplied relevant and appropriate materials in conjunction with its experts’ testimony in rate-making cases and intends to cooperate with respect to discovery in this rate-making case as well.”<sup>23</sup> As to Request Nos. 7 and 8, CMA also contends that the requests demand information that is irrelevant or privileged. Further, CMA asserts that the language “relate or pertain” in Request No. 7 is too broad.<sup>24</sup>

As to Request No. 2, CAPD objects on the basis that the request is overbroad, burdensome and goes beyond Rule 26.02(4)(A)(i) of the Tennessee Rules of Civil Procedure.<sup>25</sup> In regard to Request Nos. 2 and 4 through 8, CAPD asserts that it has not yet identified its expert. As to Request No. 5, CAPD argues that the information sought is privileged and work product, the request is overbroad, and responding may be unduly burdensome.<sup>26</sup> As to Request No. 8, CAPD objects on the grounds that the request will not lead to the discovery of admissible information and is overbroad and unduly burdensome.<sup>27</sup> CAPD responds to the motion to compel by noting that along with its response to the motion it filed limited responses to the discovery requests, but that it was unable to respond thoroughly and entirely given the

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<sup>22</sup> *CMA Objections* at 4-6.

<sup>23</sup> *CMA Response* at 4.

<sup>24</sup> *CMA Objections* at 4-6.

<sup>25</sup> *CAPD's Objections* at 6.

<sup>26</sup> *Id.* at 7-9.

<sup>27</sup> *Id.* at 10.

unavailability of information.<sup>28</sup> CAPD states that it was necessary for it to assert its objections and, despite its limited responses, the objections are valid.<sup>29</sup> CAPD also characterizes TAWC's requests in general as unreasonably cumulative, duplicative, obtainable from other sources and unduly burdensome.<sup>30</sup>

In the motions to compel, TAWC asserts that the requests seek basic information concerning the facts known and opinions held by CMA's and CAPD's expert witnesses and such requests are permitted by the Tennessee Rules of Civil Procedure. Additionally, TAWC argues obtaining this information through these discovery requests is the most efficient and reasonable manner in which to obtain the information.<sup>31</sup>

The Pre-Hearing Officer finds that Request Nos. 2 and 4 through 8 are not overbroad, vague, or ambiguous. The requests seek information that is relevant and may lead to the discovery of admissible evidence, and responding to the requests will not be unduly burdensome. Additionally, while the information requested may be obtainable from other sources, the reference or citations to the information is more likely not be obtainable from other sources.

Request No. 2 does not exceed the scope of Rule 26.02(4) of the Tennessee Rules of Civil Procedure. This rule provides:

(4) TRAIL PREPARATION: EXPERTS. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the

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<sup>28</sup> CAPD Response at 1. CAPD filed responses to these requests on April 16, 2003 without waiving its objections. CAPD provided limited responses and stated that its investigation is ongoing and that many responses to the requests have yet to be determined. CAPD did list as expert witnesses it may call to testify Dr. Stephen Brown, Mark Crocker, Michael Chrysler, and Dan McCormac. CAPD also provided resumes and publications of the potential expert witnesses. CAPD Response to Discovery at 4-7.

<sup>29</sup> CAPD Response at 2.

<sup>30</sup> Id. at 5.

<sup>31</sup> Motion to Compel – CMA at 3; Motion to Compel – CAPD at 3-4.

substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(ii) A party may also depose any other party's expert witness expected to testify at trial.<sup>32</sup>

CAPD broadly asserts that Request No. 2 falls outside of subsection (A)(i) of the above-quoted rule.<sup>33</sup> Subsection (4) permits discovery of otherwise discoverable facts known and opinions held by experts acquired or developed in anticipation of litigation. Request No. 2 relates to such facts and opinions as well as to the identify of the expert,<sup>34</sup> the subject matter on which the expert will testify,<sup>35</sup> the substance of the facts and opinions contained in the expected testimony,<sup>36</sup> and a summary of the grounds for the expert's opinions.<sup>37</sup> Moreover, the Pre-Hearing Officer agrees with TAWC that obtaining this information through TAWC's requests is the most efficient manner with which to proceed.

CAPD also objects to Request No. 5 on the grounds that the information sought is protected by the work product doctrine. The Tennessee Court of Appeals has set out in detail the procedure to follow when such an assertion is made. The relevant portion of the procedure is described as follows:

In usual circumstances, discovery will begin when a party sends to an opposing party a request for discovery using one of the methods identified in Tenn. R. Civ. P. 26.01. If the party receiving the request for discovery believes that some or all of the requested documents are covered by the work product doctrine, that party need only notify the requesting party that it is declining to provide some or all of the requested documents based on the work product doctrine. At this point, if the party seeking discovery insists on obtaining the withheld documents, it may move for an order pursuant to Tenn. R. Civ. P. 37.01 to compel discovery.

At this juncture, the party seeking discovery, as the party seeking an order compelling discovery under Tenn. R. Civ. P. 37.01, has the burden of

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<sup>32</sup> Tenn. R. Civ. P. 26.02(4)(A) (2003).

<sup>33</sup> *CAPD's Objections* at 6; *CAPD's Response* at 4.

<sup>34</sup> Sub issues (a), (b), (d), and (f) relate to the identity of the expert.

<sup>35</sup> Sub issues (a), (c), (d), (g), and (h) relate to the subject matter on which the expert will testify.

<sup>36</sup> Sub issues (c), (d), (e), (g), and (h) relate to the substance of the facts and opinions contained in the expected testimony.

<sup>37</sup> Sub issue (c) and (h) request summaries.



establishing that it is entitled to discover the documents or other materials withheld by its adversary. To carry its burden, the party seeking discovery must establish (1) that the material being sought is relevant to the subject matter involved in the pending action, (2) that the material being sought is not otherwise privileged, and (3) that the material being sought consists of documents or other tangible things.

Once the party seeking discovery makes a prima facie showing that the materials it seeks are discoverable, the burden shifts to the party opposing discovery to show that the materials are work product protected by Tenn. R. Civ. P. 26.02(3).<sup>38</sup>

CAPD appropriately asserted the application of the work product doctrine. TAWC does not, however, address this assertion in its motion to compel. Thus, TAWC has failed to meet its burden and CAPD's objection to Request No. 5 should be sustained.

Based on the foregoing, the Pre-Hearing Officer finds that TAWC's motions to compel should be granted in part. CAPD's objection to Request No. 5 is sustained, and CAPD is not required to respond to Request No. 5. Otherwise, CMA and CAPD shall respond to the requests to the extent information is available. As with the previous set of requests the parties need only provide references to those documents that are in the record. CMA and CAPD are not required to produce information or documents it deems in good faith to be privileged.

**C. Documents Relied Upon or Referred to When Responding to Discovery (REQUEST NO. 9)**

In its April 7<sup>th</sup> objections, CMA contends that this request is overbroad, vague, ambiguous, and unduly burdensome. CMA also states that it has not identified experts that will

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<sup>38</sup> *Boyd*, 88 S.W.3d at 220 (footnotes and citations omitted). Rule 26.02(3) provides:

**(3) Trial Preparation: Materials.** Subject to the provisions of subdivision (4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

Tenn. R. Civ. P. 26.02(3) (2003).

testify at the hearing and that CMA will do so within the time limits of the procedural schedule.<sup>39</sup>

CAPD did not specifically object to this request.

In its motion to compel, TAWC argues that the purposes of this request are to eliminate surprise and clarify issues. TAWC states that CMA's objections are without merit and that it should respond when the information is available.<sup>40</sup>

In its response to the motion to compel, CMA states that, without waiving all objections, it may produce demonstrative evidence at the hearing. CMA further suggests that the Pre-Hearing Officer require the parties to exchange exhibits by June 25, 2003. No other party responded to this suggestion.

The Pre-Hearing Officer finds that the request is not overbroad, vague, or ambiguous and that responding to the request would not be unduly burdensome. Additionally, this request falls within the scope of 26.02(1). CMA shall respond to this request as information becomes available, and all parties shall serve on each party by no later than June 25, 2003 all items intended to be offered as evidence.

**D. Materials for Use at the Hearing (REQUEST NO. 3)**

CMA objects to this request on the grounds that it is overbroad, vague, ambiguous, and unduly burdensome. CMA also states that it has not identified experts and that it will supplement its response once it has identified experts that will testify at the hearing within the time limits of the procedural schedule.<sup>41</sup>

CAPD asserts that it is not its duty to provide all documents referred to or relied upon, but agrees to provide references on a "limited basis where possible."<sup>42</sup> CAPD responds to the

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<sup>39</sup> *CMA Objections* at 6.

<sup>40</sup> *Motion to Compel – CMA* at 4.

<sup>41</sup> *CMA Objections* at 4; *CMA Response* at 3.

<sup>42</sup> *CAPD's Objections* at 6-7.

motion to compel by noting that along with its response to the motion it filed limited responses to the discovery requests, but that it was unable to respond thoroughly and entirely given the unavailability of information.<sup>43</sup> CAPD states that it was necessary for it to assert its objections and, despite its limited responses, the objections are valid.<sup>44</sup> CAPD also characterizes TAWC's requests in general as unreasonably cumulative, duplicative, obtainable from other sources and unduly burdensome.<sup>45</sup>

In its motion to compel, TAWC asserts that this is a standard and basic request. TAWC describes CMA's objections as general and boilerplate.<sup>46</sup> As to CAPD, TAWC states that, although it does not agree that CAPD may limit its response as proposed, TAWC will "accept references to specific documents in lieu of physical copies, except where such documents have not been previously produced in this case."<sup>47</sup>

The Pre-Hearing Officer finds that the request is not overbroad, vague, or ambiguous and that responding to the request would not be unduly burdensome. Additionally, this request falls within the scope of 26.02(1). Nevertheless, responding to the request may require parties to provide information that is in the administrative record or information that the party has previously provided in response to another discovery request. Therefore, in responding to this request CMA and CAPD shall provide references to the administrative record and list those documents previously provided and the related request numbers. All other documents shall be provided.

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<sup>43</sup> *CAPD Response* at 1. In response to this request, CAPD referred to its response to 2(g). (There appears to be an error in CAPD's response it that it actually refers to its response to Request No. 1(g). There is no (g) under Request No. 1. The only request with a (g) is Request No. 2.) The response to 2(g) refers to "petitioner's filing, the TRA's order in Docket No. 99-00891, and other documents to be determined." *CAPD Response to Discovery* at 5.

<sup>44</sup> *CAPD Response* at 2.

<sup>45</sup> *Id.* at 5.

<sup>46</sup> *Motion to Compel – CMA* at 4.

<sup>47</sup> *Motion to Compel – CAPD* at 4.

**IT IS THEREFORE ORDERED THAT:**

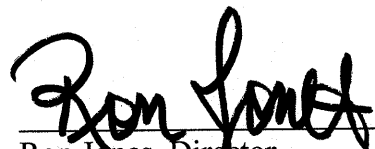
1) *Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on Chattanooga Manufacturers Association and Tennessee American Water Company's Motion to Compel Responses to Discovery Propounded on the Consumer Advocate and Protection Division of the Attorney General for the State of Tennessee* are granted in part and denied in part as set forth herein.

2) Chattanooga Manufacturer's Association and the Consumer Advocate and Protection Division shall respond to Tennessee American Water Company's discovery requests as set forth herein by **Friday May 2, 2003**.

3) The procedural schedule contained in the *Order on March 12, 2003 Status Conference* is amended as follows:

Second Round of Discovery Requests..... Wednesday, April 30, 2003  
**Responses from CMA and CAPD to TAWC's 1<sup>st</sup>**  
**Round of Discovery Requests ..... Friday, May 2, 2003**  
Responses to Second Round of Discovery Requests.....Friday, May 9, 2003  
**Second Round of Discovery Requests from TAWC to**  
**CMA and CAPD ..... Friday, May 16, 2003**  
Intervenors' Direct Testimony and Responses to TAWC's  
**2<sup>nd</sup> Round of Discovery Requests ..... Friday, May 30, 2003**  
Rebuttal Testimony of all Parties.....Friday, June 20, 2003  
**Exhibits Produced by All Parties to All Parties .....Wednesday, June 25, 2003**  
Hearing.....Monday, June 30, 2003 and Tuesday, July 1, 2003

4) All parties shall timely supplement their discovery responses as information becomes available.

  
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Ron Jones, Director  
Acting as Pre-Hearing Officer

## **APPENDIX**

### **DISCOVERY REQUESTS**

#### **A. BASIC OPPOSITION TO RATE INCREASE (REQUEST NUMBERS 1, 10 AND 11)**

**Discovery Request Number 1:** State in detail the legal and factual basis for any objection or opposition CMA/CAPD has with respect to any aspect of the rate increase requested by TAWC in this docket.

**Discovery Request Number 10:** Please produce all documents that refer or relate to the subject matter of your response to Discovery Request No. 1.

**Discovery Request Number 11:** Please identify by name, address, employer, and current telephone number, all persons having knowledge of the subject matter of your response to Discovery Request No. 1.

#### **B. EXPERT TESTIMONY**

**Discovery Request Number 2:** Identify each person whom you expect to call as an expert witness at any hearing in this docket, and for each such expert witness:

- (a) identify the field in which the witness is to be offered as an expert;
- (b) provide complete background information, including the expert's current employer as well as his or her educational, professional and employment history, and qualifications within the field in which the witness is expected to testify, and identify all publications written or presentations presented in whole or in part by the witness;
- (c) provide the grounds (including without limitation any factual bases) for the opinions to which the witness is expected to testify, and provide a summary of the grounds for each such opinion;
- (d) identify any matter in which the expert has testified (through deposition or otherwise) by specifying the name, docket number and forum of each case, the dates of the prior testimony and the subject of the prior testimony, and identify the transcripts of any such testimony;
- (e) identify for each such expert any person whom the expert consulted or otherwise communicated with in connection with his expected testimony;
- (f) identify the terms of the retention or engagement of each expert including but not limited to the terms of any retention or engagement letters or agreements relating to his/her engagement, testimony, and opinions as well as the compensation to be paid for the testimony and opinions;
- (g) identify all documents or things shown to, delivered to, received from, relied upon, or prepared by any expert witness, which are related to the witness(es)' expected testimony in this case, whether or not such documents are supportive of such testimony, including without limitation all documents or things provided to that expert for review in connection with testimony and opinions; and

(h) identify any exhibits to be used as a summary of or support for the testimony or opinions provided by the expert.

**Discovery Request Number 4:** Please provide all material provided to, reviewed by or produced by any expert or consultant retained by CMA/CAPD to testify or to provide information from which another expert will testify concerning this case.

**Discovery Request Number 5:** Please produce all work papers of any CMA's/CAPD's proposed experts, including but not limited to file notes, chart notes, tests, test results, interview and/or consult notes and all other file documentation that any of CMA's/CAPD's expert witnesses in any way used, created, generated or consulted by any of CMA's/CAPD's expert witnesses in connection with the evaluation, conclusions and opinion in the captioned matter.

**Discovery Request Number 6:** Please produce a copy of all trade articles, journals, treatises and publications of any kind in any way utilized or relied upon by any of CMA's/CAPD's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter.

**Discovery Request Number 7:** Please produce a copy of all documents which relate or pertain to any factual information provided to, gathered by, utilized or relied upon by any of CMA's/CAPD's proposed expert witnesses in evaluating, reaching conclusions or formulating an opinion in the captioned matter.

**Discovery Request Number 8:** Please produce a copy of all articles, journals, books or speeches written by or co-written by any of CMA's/CAPD's expert witnesses, whether published or not.

**C. Documents Relied Upon or Referred to When Responding to Discovery**

**Discovery Request Number 9:** Please produce any and all documentation, items, reports, data, communications, and evidence of any kind that CMA/CAPD intends to offer as evidence at the hearing or to refer to in any way at the hearing.

**D. Materials for Use at the Hearing**

**Discovery Request Number 3:** Please produce copies of any and all documents referred to or relied upon in responding to TAWC's discovery requests.